Editorial notes on police brutality

Originally I had planned to produce for Reason as its first venture into the subject of the police an essay on the methods by which the police may morally obtain data for their work. After some thought, however, I decided some general preliminary work was in order before branching into a specific topic like data and the police. Actually, there is little literature available on how the police would operate in a free society, and at a time when the police threaten to become an increasingly intrusive part of American life, this is disappointing. Disappointing too, is the lack of knowledge about how the police now operate that most people, including vehement supporters and detractors of the cops, display —— as well as the absence of intellectuality evidenced in most debates about the police.

This month's editorial notes will deal with the popular subject of brutality from a reference point different from that of the average magazine. Better than perhaps any other aspect of the police (because when transposed into the proper terms it is the ***central*** aspect), brutality affords a perfect beginning to an article (or series of articles) on theory of police work, structure, and power.

After each recent mass police action that shed blood —— People's Park, Chicago, Harvard, Columbia —— debate begins anew. "Liberals," "conservatives," "radicals," "lawnorder Democrats" argue endlessly: were or were not the cops brutal? As enlightened observers will not need to be told, the results of these debates have been inconclusive, due primarily to the contradictions underlying the arguments of the debaters. Asked to provide a conceptually consistent definition of brutality, the average debater would be hard pressed to provide even a semblance, let alone a logically defensible definition.

As is so often the case, it is the New Left that comes closest to the truth, if only accidently. It is absurd, they say, to argue whether or not the police were brutal in any particular instance because the ***system*** is brutal by definition. As the system's agents of enforcement, the police cannot but be brutal. Structured as the policeman's duties are around mythical non-existent concepts of "private property," beastiality is assured.

When the new left says that not merely the individual cop, but the system itself is to blame, they are correct. The mixed economy (which New Leftists are fond of referring to as capitalism), they explain, is the demon: unmix it —— seize and distribute all property —— and the police would no longer have cause for brutality; indeed, the police would wither away. Again they are correct (if only in part): the mixed economy ***is*** the fundamental source of police brutality.

Correct also to say that the solution is to alter the system, to unmix the economy, but in which direction? The mixed economy (alternatively referred to as the welfare state) is a mixture between a free economy and a totalitarian state, embodying some attributes of each of its components. In practice this means that some areas and aspects of human action are controlled by the State, and some areas and aspects are not.

Essentially, the New Left argues for further controls in America's mixed economy (this despite their apparent concern with "freedom" and "controlling one's own destiny," and their unprincipled opposition to certain crimes by the state, such as the draft), the amount and type dependent on the specific group or individual questioned. While it is outside the scope of these notes to dissect the New Left's position (or that of any other group) vis-a-vis the police, after I finish here the reader should be amply capable of doing that himself.

The thesis I wish to demonstrate here, and the one which in the doing must reveal the brutality debates as intellectually sparse, is that, of the three political alternatives, a free economy, a mixed economy, a totalitarian state, only one provides the economic, political, and cultural context in which systematic police brutuality cannot be a problem: a free society.

If the current debates over police brutality prove inconclusive, it should hardly surprise inveterate Reasoners. Consider the term "brutality" and the debater's apprehension of the word, Although at first glance "brutality" might seem of obvious enough definition, recourse to a dictionary and careful attention to the method(s) used by debaters to discriminate cases of "brutality" from those of "non-brutality" would indicate otherwise.

"Befitting or resembling a brute; of, relating to, or typical of beasts," are the two relevant definitions the dictionary offers. Advocates of a conceptually-oriented theory of psychology will immediately see at least one source of the debaters' confusion. It would hardly be much of a guess to say that most, if not all, of those engaged in such debates are advocates or victims of the numerous no-mind psychological theories that predominate the culture. As such, they would have no consistent method to separate acts of brutality from non-brutality—as the endless debates well illustrate. Certainly the phrase "police brutality" does not refer specifically to the act of a policeman striking a citizen. Commentators on the subject will admit this much, if only vaguely, when (and if) they warn television viewers: "tonight's film of the police bust at X University does not show the 'whole picture.' " (Reports of provocation, of bottles and stones thown at police, then follows.) Thus, albiet sloppily, some considerations of a conceptual nature are allowed to be of importance in determining the veracity of brutality charges.

"Brutuality" is not a lower order concept that refers to some particular action or class of action as does, for example, the term "murder." Attempting to use the word as if it ***were*** a lower order concept leads to some odd contradictions. If brutality refers to that which is typical of beasts, of animals, and if macing a citizen is brutal ***per se,*** well, have you ever heard of an animal macing its prey?

Rather, brutality is a higher order concept, as is, for instance, the concept "value." One cannot point to some existent, say a chair, and say, "that is value"; instead (if one is to be consistent), one must mean that the chair is of value to someone. The chair is not a value in and of itself apriori of human needs and desires. Value is a ***mental*** concept; so is brutality.

Thus, one cannot merely view a film of a cop clubbing a student and declare apriori further data that what one has seen is or is not brutality. One must first determine ***why*** the incident took place: what happened before the filming and beyond camera range; what legal strictures and contractual agreements were in force at the time; most essentially, what was on the minds of the participants (this list isn't exhaustive).

The essential difference between human and animal, between man and beast is man's capacity for rational thought. When one says of a person that he acts like a beast, rationally one means that

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that person acts outside the limits reason and self-interest would sanction; that he is acting against his nature as a rational being. The specific action we see as irrelevant, for under differing circumstances the same action can be rational or irrational. What is of concern is the quality of the mental operations of the person in question. In the case of the policeman beating the kid, the policeman's motivation could be either rational or irrational, the effects of his action either just or unjust, his actions befitting of either man or beast. We don't know. And neither do the debaters, despite their assertions to the contrary.

To be fair, it should be said that not all those concerned with brutality depend entirely on this mechanicalistic view of human action, and also, that in certain circumstances it is possible to determine from newsfilms alone cases of brutality.

I recently saw an extremely telling film on a local newscast of the weatherman rampages in Chicago in October (1969). You'll recall that a police official was struck by a brick in that melee, and paralyzed as a result. The film showed the man prone in the street sometime after the incident and a girl (of unmentioned identity) kneeling beside him; the weathermen were some unknown distance from the scene. A group of riot police came over the unconscious man, picked him up, and began to carry him off to an unknown (by me) location, perhaps to the sidewalk, perhaps to a waiting police van. At this, the girl leaped up and screamed, "Don't move him, don't move him. You'll kill him." Which is true enough, as anyone who's taken a first aid course can testify. The police ignored the girl, and sobbing and screaming, she began beating her fists against the back of one of the officers. Two more policemen came into view and restrained the girl by the arms. When she tried to wrest away, someone said, "Book her," and the two policemen carried her off.

Now, I think that this is a pretty clear case of unthinking action on the part of the police. If there was good reason to move the man, a stretcher is certainly not too much to ask of the police of a civilized nation. Possibly the weathermen were on the rampage at that moment and headed for the scene, but the film did not seem to indicate this. And the arresting of the girl, while something I was hardly surprised to see, was inappropriate. But even as clear as the events appeared to be, I hesitate passing unqualified judgement without speaking to participants. The camera is a passive item that captures, within the limits of its design, what is before it. It cannot understand what is happening or why, or even cover the whole scene, and it most certainly cannot perceive directly the thoughts of the participants.

Now I have demonstrated what brutality is ***not:*** it is ***not*** a class of actions connected by some physical similarity, but instead a class of actions connected by a similarity of intention or mental state of the actor, that is, a class of actions connected by a ***conceptual*** similarity.

In the introduction I alluded to the need to transpose the term brutality if the analysis were to be truly central, really relevant. "Brutality", it should be sufficiently clear by now, is a term inadequate to cope with the problem it describes. The fundamental issue is not brutality, but force: who uses it, how, and why. Force ***must*** be of first and primary importance, as it is force that is a police department's most essential service.

With respect to their effects on other men, a policeman's (or any man's) actions may be divided into two broad categories: those which are coercive and those which are not. Coercive actions (or non-actions, which I mean to include here in the concept "actions") are those which deprive other men of their rightful range of choice. Non-coercive actions are those which do not deprive other men of their rightful range of choice.

Here is an example of a coercive act (which, incidently, involves a non-action). A man rents a car in exchange for payment and a promise that he will return it on time. He maliciously fails to return it on time, thus committing an act of coercion: preventing the rental agency from carrying out their decision as to what next to do with their car. The errant rentee has deprived the agency of their car, their rightful ability to carry out their plans, and any values the agency might have gained from the planned employment of the car.

Although the rentee used no weapon in the conventional sense, he nevertheless prevented the agency from exercising its right to dispose of its property in whatever way it sees fit.

Note that by this analysis, acts of coercion may be committed without weapon, through inaction as well as through action, and at considerable distance from the victim. If coercion is deemed evil (and there is excellent literature proving that it is), it is easily seen that the current controversy over brutality is diversionary—or worse. Only a small percentage of police action is "brutal," in the figurative, bloody sense. Yet a large portion is coercive. To the observer seriously concerned with issues of morality, it hardly matters that police do not mace every person they arrest. It's nice that they don't, certainly, but as has been indicated, there is more than one way to bludgeon a citizen. Instead of throwing a man in a cell and letting him starve, the state can simply and "non-violently" siege the contents of his bank account, and starve him that way. In an advanced-technology welfare state, the weapons of enforcement available to police are numerous, effective, and subtle. In the coming cashless society, for example, the computer will become increasingly useful as a tool of instant confiscation, just as the invention of paper money has already allowed the state to exercise enormous control over the economy.

The concepts of coercion and non-coercion, although better than "brutality" (or"non-violence," another Establishment favorite) for studying the morality of police work, are still not enough. They must be parted into yet another pair of terms, which will finally provide sufficient base for analysis. The culture has these concepts, but because the explicitly formulated moral precepts to support them are still lacking, like bullets without a gun, there is no reason to bring them forth.

The concepts derive from observing that there are two conceptually differentiable forms of force: the first, embodied in actions designed to gain the actor an unearned value; the second, embodied in actions designed to preserve and protect an earned value from the effects of actions of the first variety.

Actions of the first variety, actions of a parasitical or destructive nature, represent initiatory force. Actions of the second variety represent retaliatory force. There is a fundamental difference in the moral status of those who commit one or the other of these two varieties of force, but because there is good literature quite explicit on the topic, I needn't spend time on it. A warning, however, is in order. While there is good material available concerned with ***principles*** of force, there is little coherent on the subject of ***applications*** of force: how to determine when initiatory force (crime) has been committed, how to determine motive, how most rationally to retaliate, how to decide when retaliatory force has overstepped its moral bounds and become ***initiatory*** force, and so forth.

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Initiatory force, the province of the criminal, is wrong because it deprives the victim of his rightful range of choice. If a man has a right to his life, liberty, and property, he has a certain range of choice that must be said to be his by right, ***derived*** from his right to life, liberty and property. Initiatory force deprives him of that range and may, of course, deprive him of material value as well. Note that "coercion" and "initiatory force" have the same definition, and are synonymous. The purpose of this duplication, to the extent that there is one, would seem to be to allow one to construct the concept-sets (coercive/non-coercive, initiatory/retaliatory force) useful as discussion of slightly different problems.

At this point the pacifists in the audience might stop me to ask, "But what about retaliatory force? Isn't ***that*** coercion?" (Meanwhile, a couple of Establishment hacks in the front row will be heard to mutter, "Violence is violence. It's all the same.") Well, of course, proving that this is not so, that retaliatory force is ***not*** coercion, must of necessity be a task of central importance in these notes, for without this link, the consistent reader must conclude that a police force is morally unjustifiable.

Coercion is that which deprives men of their rightful range of choice. Note: ***rightful.*** Now it is true that retaliatory force deprives the person against whom it is launched the full range of choice he would have had had it not been for retaliation. But so long as it remains only retaliatory force, the choices of which it deprives the criminal are not his by right.

As example: suppose I were to announce my intentions of levitating the Pan Am building in NYC if its owners did not ship me within seven days $100,000 worth of aluminum foil balls. Now suppose another man, hired by the owners of the building, took actions appropriate to prevent the commission of this dire deed (gluing down the buildings, taking away my magic wand). While it is true that the activities of the Pan Am building agent (at least the removal of my wand) do represent force against me, they do not constitute coercion, for it is not within my right to levitate (or threaten levitation of) the Pan Am building, it not being my property and there not existing any agreements establishing my prerogative. It was I, then, who initiated, or more precisely, threatened to initiate, force. The owners simply responded. Observe: My threat came first; I ***initiated.*** Their action action came second, after mine; they ***retaliated.*** If a man has a right to his life, liberty and property, then it follows he has a right to protect those rights from aggression, and to demand retribution from those who succeed in violating his rights. From this stems the right to self-defense and from that, the justification for police services. Rather than every citizen carrying sidearms, it is recognized that policework, like any other skill, does well by a division of labor. Thus, the police department comes into existance.

In a free and rational society, the proper role and moral justification of the police is the protection of human rights through the use of (exclusively) retaliatory force. Some of the specific kinds of services this protection requires includes bodyguard and watchman duties, investigation of (alleged) crimes, arrest of suspects, operation of courts (to try suspects and settle disputes), plus running prisons and retribution agencies. (Note that I am using the phrase "police work" alternatively to refer to the operation of agencies of retaliatory force in general, and the cop on the beat in specific.) Ideally, the purpose of the police is to protect the interests of honest (non-coercive) citizens against the criminal acts of the dishonest.

In order for the police of a free society to act in pursuit of justice there must exist a body of general rules ("laws") delineating the moral perimeters of human interaction. If the enforcement of these laws is not to subvert the moral justification of the police force, the laws must not require the initiation of force against morally innocent citizens. ***Should*** the laws require initiation, there would be at least two immediate consequences. First, the society would no longer be free, since freedom (in the political sense) means freedom from coercion. Second, the police would become, in principle, criminals in uniform (or in a society in which the police force wasn't fortunate enough to be able to afford uniforms, just plain criminals). That these laws might have been "passed" in the name of justice would not alter the matter: justice demands that every man be treated precisely as he deserves. Clearly, coercion of the non-coercive—treating the innocent as if they were criminals—is not just. In an important respect, the police of a criminal legal system are worse than common criminals. The common criminal one can retaliate against — by hiring a cop. But what happens when the ***cops*** become criminals? Where does one turn?

There is a third consequence (that should concern us here) when the laws of a society begin to require coercion for enforcement, and this is the immediate and long range psychological effects on the police. The following section of these notes considers the question.

Economists of the Austrian school have produced an immense quantity of material demonstrating the adverse effects of disconnecting (through coercion) the risks and consequences of an activity from its participants. They have applied their principles to an amazing assortment of coercive and non-coercive activities, demonstrating in each case the impracticality of the former variety and the short and long range advantages of the latter. The expense and impracticality of the draft, the financial inanity of social security, the irrelevancy of the moon shot, the sluggish monster of the postal service, have all been topics of discussion in various journals of libertarian economic thought. Very few economists, however (as far as my limited reading would indicate), have applied their principles to police work, even police work is just a service, like insurance or fire protection. (I recognize that some readers might contend that force is an extra-market phenomenon. I don't, however, think this objection can be logically upheld. While initiatory force ***is*** market-distorting, retaliatory force, which is what the police of a free economy would be using exclusively, is non-coercive and therefore not market-distorting.) Viewing the police in an economic light provides an interesting way to demonstrate that police brutality is an inevitable outcome of a disintegrating welfare state, and to show the workings of one very important set of factors that provide incentives against any form of brutality on a free market. Unfortunately for the completeness of such an analysis, while there are more than enough examples available of what happens to the police of a mixed economy, there is no similar material on the police of a free society — such a system has never existed.

The aspect which subsumes (it is implicit in) the most others is the fact that the police of a free society operate under full liability, while the police of a mixed economy operate under limited liability. In a full liability legal system(s) liability for the actions of persons or groups of per-

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sons is assumed by those persons morally responsible (either those who acted or those who contractually consented to accept a portion or all the risks or benefits of said actions), and is not to be directly or indirectly forced via the legal system on innocent third parties. A full liability legal system is a free legal system or a free economy — the terms are synonymous. A free economy might not (probably wouldn't) be entirely free from random coercion, and the reader would be justified in pointing out my earlier claim "freedom means freedom from coercion" seems to clash with this. What I mean by a free economy is one in which all acts of coercion are recognized and treated as such, in which perpetrators of crimes are made to pay retribution to the victims, and criminals of an obviously violent or recalcitrant nature are confined and rehabilitated at their own expense (all this within the limits of economic profitability and human knowledge).

Full liability and freedom are equivalent. Every action has inherent in it a certain amount of liability (or consequence); "limited" liability cannot dimish that total, only force morally innocent people to assume some or all of the total. Full liability means that ***only*** those morally accountable bear the legal burden of the conseqences (whether viewed as beneficial or detrimental) of actions. Wide scale coercion can exist only in a limited liability matrix, and is, in fact, the thread with which such a matrix is woven.

The police of a free society, engaging in retaliatory force only, enforcing laws of a defensive nature only, would be bound by the same laws they enforced, and would stand fully accountable for their actions. They would obtain special privileges from other parties only with and by those parties' voluntary consent, and only if such consent and privileges did not violate existing contracts and the rights of any person. A highway patrolman, for example, could operate his vehicle in a highly unorthodox manner in the pursuit of a suspect, if and only if, he had the permission of the road owner and the unusual driving could not be construed as violating the rights of other road users (including the suspect). In the event that a free society cop did initiate force, he would be held as legally accountable as any private citizen. (In fact, the concept set "public/private," in the context it is used here, would disappear from the language of a fully free society. There would be no "public" vs. "private", only voluntary associations.)

Compare this system with the limited liability cops of today. First of all, most of the laws which police enforce today are inherently unjust and initiatory (see other articles in this issue). However, this is not a sufficient condition to make police (and society) of limited liability. One further condition must (and does) exist: that the legal system of which the police in question are a part be the ***only*** legal system with jurisdiction over the citizens involved, or that if other legal systems do have jurisdiction they be of the same fundamental character as the offending one.

If the legal structure of a society is unjust, then like every other person and enterprise within that legal system, police and police departments will be accountable for only a portion of the full liability of their actions. As it stands in America today, the police aid in the trampling of rights on such a massive scale that there is hardly a word sufficiently descriptive. Limited liability? The price of retribution due to the victims of the crimes committed by police on any single day would be beyond calculation, yet not only do these crimes go undenounced (for the most part), and the perpetrators, police and politicians, unpunished, but, even worse, the victims are forced through taxes to finance the operation and salaries of the criminals.

But there is an aspect to the structure of this country's (and, I would guess, every welfare state's) system which serves to even further reduce the policeman's liability far below that of the average citizen's. Through a combination of specific legislative acts, departmental procedures, monopolistic default, and the general effect and aura of the laws they enforce, police have come to a point where, to one degree or another, they are above the law. Not only may (and do) and must police squash rights within the law, but, the degree dpending on circumstances and motive, they may also do so outside the law. Here the reader is referred to a paperback released in September by Vintage: ***Police Power,*** (a study of police abuses in New York City) by Paul Chevigny. While I can't vouch for the book's accuracy, the cases discussed and the transcripts quoted indicate how the police can use the law in a style and spirit and for purposes not consonent with a legal ideal of freedom. ***Police Power*** also indicates, if incompletely and from faulty premises, the nature and degree of the special legal status contemporary police enjoy. Since these notes are not meant as a critical evaluation of today's cops I won't spend much time reviewing the book, but several references would be helpful to my thesis.

The introduction states: "This is not a book about sensational police scandals, either of corruption or of the third degree. It does not deal, and is not intended to deal, with the macabre excesses of the police as they are occasionally recorded in the newspapers, but rather with the routine details of due process of law by false arrest, by unlawful search, and by 'summary punishment' — police brutality."

The book describes a number of New York City street scenes (and ensuing legal procedures) in which a policeman, after acting unwisely, slaps an innocent (and sometimes, to the policeman's chagrin, eminently respected) citizen with a "cover" charge of disorderly conduct, resisting arrest, or even assaulting a police officer. The District Attorney then generally offers to drop the charges against the citizen in exchange for a waiver of any civil charges against the cop. If a citizen refuses, since he has little chance of proving himself innocent of the charges placed against himself, (a policeman's word is almost never questioned except when respected citizens are involved), he also has little chance of winning a civil case against his police assailant: the citizen now has a criminal record and is an "unreliable" witness.

Also described are illegal search and seizure, frames, systematic harrassment of hippies, commies, perverts, bums, and other social outcasts, mass police actions, police reactions to criticism and defiance (verbal or otherwise), and firearms deployment. Several other books that I read in preparation for these notes, but which weren't as valuable, were ***Behind the Shield*** by Arthur Niederhoffer (an ex-cop), (days in the life of a rookie), ***Walking The Beat*** by Gene Radano (another ex-cop), and ***The Tarnished Badge*** by Ralph Lee Smith. Of the three, the last is the most relevant here. Smith covers police scandals in several cities involving gambling, safecracking, burgleries, ticket-fixing, and "protection." Also described is the procedure by which citizens of Chicago may register complaints against their police.

Several of the things that allow police to stand above the law include the secrecy and tightknit quality of the police force, the personnel rules that characterize departments, and the comparative homogeneity of outlook among police (due to

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preselection, attrition, and assimilation). ***The Tarnished Badge*** contains much material that indicates how these three procedures operate.

Here, for example, is part of an interview that Smith conducted with a convicted cop-burglar:

Smith: "When did you first get an inkling that things weren't on the up-and-up?"

Ex-Cop: "It didn't take long. We had four weeks of training and then went on the job as probationary patrolmen. I was a pretty eager cop, and right away, I caught two burglars stealing a generator fromaa warehouse. It turned out that they were both policemen. What could I do? I was a rookie on probation and it would have been my word against theirs. On the force, if you don't shut up and go along you don't last out your probation. One or two bad reports on you filed by veteran cops and you're dropped without even being told why."

Elsewhere in the book the code that had bound the police of the burglar's department is described: if you're crooked, then you're one of us, and that's fine, but if you're good, you'd do well to keep quiet if you enjoy being a cop. Among police there is nothing considered fouler than for one cop to squeal on another, no matter what evil has been committed.

This ends the brief discussion of limited and full police liability. What are the effects on police of each system?

Under full liability, individuals are rewarded in proportion with their success or failure. The pleasure/pain reaction works in harmony with, not in opposition to, the facts of reality. Even the most shiftless individual would be careful not to damage what isn't his (assuming he isn't masochistic), if only because he doesn't want to spend the rest of his lazy life working to pay back the damages. Even setting aside the essential fact that any society that implemented full liability would have to be comprised primarily of rational men in the first place, such a system would provide all sorts of negative and positive feedback to discourage parasitism and encourage self-sufficiency.

Under limited liability, the exact opposite is true. Crime is rewarded; honesty, punished. Such institutionalized inversion, together with the ideas that predominate such a society, churns out hordes of crooks. It's only logical; when men see that (or believe) their "self-interest" is served by stepping on others, and ***only*** by stepping on others, and when the philosophies of the day tell them that this—endless, irresolvable strife among men—is exactly what life requires and all they can ever expect, well, how else but as a horde of crooks might you expect that society to end up?

Whatever effects the two systems have on ordinary citizens, it will be even more pronounced with the police, as under either system police will be selected for their unswerving allegiance to explicit or implicit ethical norms embodied in the political structure. In a free society, consciencious law enforcement officers would be exactly what the police apologists of every state in history have claimed their cops were: guardians of justice. Because all the laws that they enforced would be rational, defensive, and noncoercive, police could honestly be called, for the first time in history, both law enforcers ***and*** protectors of rights. Under these laws, the men police would be seeking (assuming they had decent investigators) would always be criminals, (that is, men who had initiated force against some particular victim(s)) rather than, as in the present system, innocent men who happen to "break" one of the state's coercive laws. The police, perhaps more than most citizens, would be aware of the sharp line dividing right from wrong, honesty from dishonesty. To the extent they acted within the law, police would be heroes. To the extent they didn't, they would be criminals, and treated as such: they would be required to pay full retribution to their victims. Ask yourself: under such a system, what sort of man would be attracted to police work?

The police of a mixed economy, like those of a free economy, are enforcers of the law, but unlike the free economy variety, welfare state police cannot claim to be protectors of rights. The laws of a mixed economy are a random mixture of coercive and non-coercive statutes, but since even the laws of a seemingly admirable quality (laws against theft, for instance) are perverted by a penal system that concentrates, not on restitution to the victims, but on "punishment" of the criminals, justice is not served, rights are not protected. The system is not based on justice, but on vengence. To compound this injustice, the victims are forced (via taxes) to finance the prisons in which their assailants then get years of free room and board. The police of a mixed economy obtain their "customers," not through hard work and long thought on a free market, but through coercion: taxation and monopoly by force. Under the laws of the land (and those the police enforce on their own), most of the people the police seek are not criminals at all. Even in the event of the police capturing a real criminal, the kind of treatment the criminal receives after conviction (prison term of arbitrary state decreed length) is a violation of his rights (and those of the victim, certainly, since the victim receives no retribution, nor has any legal alternative by which to obtain it).

Meanwhile, the police will be found to be committing the exact same acts that they are shoving people in cages for: breaking the law (placing numbers bets, purchasing illegal weapons) and committing crimes (killing unarmed suspects, extortion of businessmen). The moral psychology of the mixed economy cop is not merely fuzzy, lacking in distinctions of right and wrong, but inverted to punish the innocent. So long as a policeman appears to act within the nominal limits of the law, he is not legally liable for any of his actions, no matter how morally vile. As yourself: under these conditions, what sort of man will be attracted to, and remain in, police work? There are two possibilities: the man who is not concerned with issues of justice and morality or the man who does not know the meanings of the words. Either kind is not to be trusted with a gun and certainly not with the sanctity of the law.

To sum up, then, what are the incentives of a full liability system against brutality? First of all, and most important, consider the sort of people who predominate the system.

If, in order to achieve a free society, men must be rational, once established, that society tends to provide continuing economic incentives towards rationality. All economic commodities, including police services, reflect the workings of these incentives. In speaking of "political systems," what one actually refers to are the people and the nature of their interrelationships. No "system" is better than—or represents anything more than—the people who comprise it.

If one assumes a cultural context in which men do choose to exercise rationality (no small assumption for most modern philosophers), the incentives against brutality become obvious. Brutality, whether overt or covert, practiced by criminals or those masquerading as police, becomes plainly economically unfeasible.

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So long as men thought there was sufficient gain to be had by preventing some particular sort of crime or prosecuting some particular criminal, they would do so. There would, of course, probably be some minor acts of brutality committed on a random basis that men might find no profit in ajudicating, yet even so, the market would tend to deter any prevalence, for as a certain type of rights-violation increased in frequency or magnitude, the profit to be derived from preventing or ajudicating that kind of crime would automatically increase. But in any event, any statist objection based on the free market's inability to handle "uneconomical" cases of rights-violation is foolish, for ***no*** social structure can supersede the laws of supply and demand.

In a free society, every act of coercion, including those by police agencies, would be a source of potential profit for honest men. Under the full liability matrix of a free society, the convicted criminal would be required to repay not only immediate damages caused by his crime, but interest on the damages, and most important here, some portion of the sum the victim had to pay to bring the criminal to justice. (Exactly how large a portion, I don't know and would like to hear from readers who might know.)

Here, then, is one way in which the elimination of specific acts of criminality would tend to increase profits (of police agencies and related firms) and, thus, incentive. Insurance companies would also be intensely concerned with reducing brutality, for it is one area where their costs could be cut with comparative ease.

The police agency that allowed its officers to run mad through the streets wouldn't last much longer than the supermarket that sold tainted food. Both would quickly be driven off the market by boycotts, legal action, or both.

One of the important sources of what critics call police brutality is the dependence of police on weapons that achieve their effect through bodily damage that, unfortunately, is often permanently disabling or lethal. The repertoire of the ordinary patrolman is revolver, blackjack, and nightstick. All are lethal, if the patrolman desires them to be—and often he has no choice. These three, however, are mild compared to certain special equipment that police have been getting into since the slum riots: Stoners, machine guns, cannons, armored vehicles, gas grenades. It isn't simple coincidence that effective non-lethal weapons (with the exception of mace, which is only marginally useful). Not only are today's policemen often not required to stand trial for the killing of a suspect, but on occasion they have actually been explicitly ***ordered*** to kill, most notably during the slum riots, in which police in several cities were ordered to "shoot to kill" unarmed looters. Obviously, there is no economic incentive towards non-brutality in the area of weapons for the police of today.

As the police of a free society would be held legally accountable for every weapon deployment, they would be certain to want the least dangerous, most effective weapons technology could offer. Thus, a whole field which has stagnated for decades under the monopolistic effects of state power would blossom into an entirely different kind of enterprise, whose products would be rated, not on their capacity for producing death, but on their ability to promote justice. (How does a dead looter help a bereaved store owner?) In a free society, the gas-propelled drug-filled dart guns (or some equivalent) which have been on the American market for years would be a standard police weapon (if, of course, police carried weapons at all—the police of some countries seem to get along fine without).

As in a free society force would always be men's last reluctant resort, the public could be expected to harbor a strong dislike of weaponry in general. Here, then, is another incentive towards non-brutality: The police force whose men went around looking like portable arsenals probably wouldn't have too many customers—who wants to get shot breaking into one's own house after losing the key?

One of the most important factors that would distinguish the police forces of a free economy from those of the mixed economy would be the police themselves. This much has been briefly characterized in the preceeding section. As those interested in criminology will know, as technology has advanced police work has become less and less an unskilled job and more and more a full-fledged profession. In a free economy the process of professionalization would accelerate. The free economy police force, dependent upon the voluntary support of its customers; unencumbered by the unprofitable and psychologically degrading need to enforce "crimes against the state," such as narcotics legislature; unobstructed by the supposed moral requisite that police departments provide free service to anyone who demands it, regardless of their ability or willingness to pay; unburdened by absurd, arbitrary labor practices, bureaucracy, and the other senseless practices that develop in every state controlled, run, or owned operation; and guided by rational standards of profit and loss, and moral standards of right and wrong, would quickly evolve into the efficient professional organization that police forces of today should be.

The police departments of a free society would be the ***last*** place a fat, unskilled, stupid, bigoted, anti-intellectual, racist, brutal, corrupt, power-seeking, trigger-happy, neurotic, latently homosexual thief would look for work. Does a medical quack seek the notice of competent doctors? Would a criminal seek to work among the most honest, law-abiding men of society—just the men most likely to turn him in at the slightest indication of dishonesty? The answer is clear.

Because the laws of a free society would be consonant with the facts of reality; because they would be designed to protect the rights of man, not the privileges of the state; because "law-making" would be not a political matter but scientific one done, not by legislators (who pass laws), but by college professors and social science R and D firms (who would ***discover*** laws), the "crimes" of a free society would really be crimes: each one would have a victim, and would be committed by a real criminal. The police would be able to make very clear distinctions between right and wrong, and there would exist the least possibility of quick, arbitrary actions which, upon retrospection, would be found to have been acts of brutality. There would exist an air of clear-headedness and cool rationality even among (particularly among) those whose job it was to physically apprehend violent criminals. Competent police of a free economy would have the incomparable psychological advantage of knowing that what they were doing was ***right,*** not because the law said so, but because the facts of reality said so.

Due to the automatic respect granted them by most people, the single specific instrumentality for the extension, implimentation, and encouragement of brutality are the laws of a society and the process by which they are enacted. The effects of a free economy on the science of law would be similar to those on the science of weaponry: it would be almost totally transformed, from its present task of serving the state (and the vested interests created by the state), to the task of serving the people.

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JUSTICE & THE WELFARE STATE

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THE WELFARE STATE

Tibor R Machan

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Imagine someone who stole a composition from its creator and claimed it as his own. Surely, the fame and fortune which may result from this theft could not be considered ***justly*** acquired. Imagine, again, someone who has been bound and gagged in a chair in his home and misses an important appointment as a result, the consequences of which are disastrous. The blame, punishment, or related adverse result our victim suffers if people do not believe his story cannot justly be considered his due. A mere case of intentionally tripping another where the result can be a broken watch or a broken head suffered by the victim further shows that where agency cannot be established —where harm or advantage befalls someone other than the person who caused the injury or benefit – we cannot justly assign responsibility for consequences. Nor do we praise a student who passes an examination by copying the answers from another's paper.

Take any political system in which it is impossible to determine who is responsible for the various events, situations, etc. that result from human action, one in which responsibility is misassigned or indeterminate because the laws and regulations which comprise the ***legal*** system of the ***political*** system render correct determination impossible——such a political system is in its most important respects ***unjust.*** While some elements of justice may be a ***de facto*** part of that society as an organized institution the society is unjust. In this paper I will show that ours is this kind of a society; i.e., I will show that the legal system we have, comprised of various laws (and regulations, backed by laws) make it impossible correctly to determine the responsibility for the consequences of the actions of citizens.

By examining any one of the examples listed earlier, it can be seen that the reason for the distortions in determining the responsibility for the events which ensued was that those who partook of the situation were either coerced or coercing others in some way —freedom of action was hampered. It is only if the coercion becomes evident, and the agent of the coercion is identified, that determination of responsibility can be made and the various situations can be treated justly. The thief gained fame and fortune by depriving the composer of his freedom to act (such as to sell or keep his composition). The bound and gagged victim was suffering consequences unduly when his failure to attend the meeting in question had adverse consequences for him (and others). The man who was tripped was deprived of his freedom to act as well, while the chap who copied the answers from his schoolmate reaped unearned grades, both cases being paradigms of injustice. In all these examples the central feature is—with varying degrees of complexity—that one man deprived another of his freedom to act as he could have chosen.

On a socio-political scale the situation is markedly similar. Slavery, to take a rather drastic example, makes it impossible to determine who is responsible for consequences of the slave and slave-owner's actions as a matter of law. In other words, while retrospectively we can assign the proper responsibility in many cases, within the context of a political system where slavery is legally sanctioned, the determination of justice will be impossible, in fact. If a slave is ***made*** to do the various chores his master wants him to do, the resulting consequences, whether beneficial or harmful, are clearly not the slave's responsibility; the slave ***might have*** acted very differently had he been free to choose his own goals, though, of course, he ***might have*** done just what the slaveowner made him do. The slave-owner himself cannot be held solely responsible for the results, for it is indeterminable whether he would have pursued his goal had slavery not been permitted by law. Whatever we might say about degrees of responsibility, what is clear is that, within a slavery sanctioning political system, the linking up of causes and effects regarding human action is rendered virtually impossible—impossible, that is, correctly. To be sure, a slave will most often be blamed when what he was told to do involved harmful consequences. If a slave is told to drive to town and in doing this he runs over a person, the slave will surely be held responsible; yet no one can say whether he would have undertaken the drive had he had the freedom to choose his course of action.

Furthermore, within the slave's private life the linking of causes with effects cannot be achieved. For we cannot tell just what personal tragedies were brought about by the slaveowner's whim, as distinguished from consequences which followed decisions of the slave that he would have made whether living as freeman or slave. Illnesses, eccentric traits, over- or undernourishment and the variety of possible states men find themselves in may all be the results of this person's status as a slave; yet they may have nothing to do with it.

With serfdom the situation is not fundamentally different. Here again the society's legal system sanctions the conditions which serfs suffer and the responsibility for events and situations in which serfs are involved cannot be assigned justly within the system.

What is common to these is that the persons involved are not free to choose their own goals, the means of attaining them, etc., but are consistently interfered with by others. Furthermore, this condition is sanctioned by law and is officially considered the most appropriate. When persons are allowed by law—or caused by law—to suffer the consequences of actions actually performed by others, when citizens must forever live as cripples because the state used them in scientific experiments against their will, or when persons are legally punished for performing badly on a job which they were forced to take—then what we have is clearly a condition of injustice within the respective political systems. And what is characteristic about injustice ***in law*** is that it obtains from the ***legal*** sanction of the coercion of some people by others, that is, the ***legal*** unavailability of freedom. If anything is properly designated unjust, it is a situation where someone is either enjoying or suffering consequences not ***caused*** by him. (This, incidentally, may be applied to the enjoyment of gifts and inheritance; however, to prevent the resulting injustice would involve a more serious form of injustice, in most cases—the usurpation of the rights of individuals to distribute what is theirs to willing takers.)

To suffer unjustly is to suffer for something caused by another. To benefit unjustly is to benefit from something achieved by another at the other's expense. (Clearly, I may benefit from another's achievements, say his tasteful dressing habits or his use of the right kind of deodorant—nowhere do I delimit his own opportunity to enjoy the consequences of his acts, however.) With some risk we may put it thusly: injustice denies, justice links cause and effect.

If a political or legal system fosters the denial of cause and effect, then it is to that extent, unjust. In order to see whether our political system can be so characterized, and why, I will consider some of the results of the laws our political system incorporates. Clearly, the impact of these laws, if there is any, may not be so severe as to cause the degree of injustice—or the scope of it within the society—that we are familiar

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with in connection with the kind of societies depicted above where slavery and serfdom were legally sanctioned and supported practices of the society as a whole. Surely, in contemporary oppressive societies the discussion of justice, in a manner as directly critical as this essay may turn out to be, would not be permitted. Yet, the simple fact that injustice has not (in America) teached a degree of pervasiveness we know it can reach and has reached elsewhere needn't soften our aversion to it, nor need it prompt us to dismiss the issue as insignificant in comparison to other harmful or evil situations which are also present.

Some of the laws which I will proceed to show to contribute to injustice are not all pervasive. There are ways in which one can avoid being submitted to the legal measures of a society. yet, in the end, it is very hard to tell whether any member of society can escape the results of unjust laws, especially if some of these results may be welcome.

The broadest of the laws which are in this category—productive of injustice that is—is the federal taxation law; it is broad because it covers all citizens who are engaged in any kind of productive enterprise. Yet, tax laws, while the broadest, are not the most consequential in impact. The law of our political system which fits the characteristic of "most unjust" is the military conscription law, better known to all as the draft. Related but less widely known noted laws which can be seen as unjust are: laws and bills permitting the subsidization of businesses; laws imposing tariff restrictions and quotas against foreign businesses (indirect subsidization); the law prohibiting the ownership of gold; laws and bills which permit the dispensation of tax-payer's funds for selected scientific endeavors, cultural ventures, educational projects, etc.; zoning laws (which operate in many of the smallest communities of the country); ***eminent domain*** laws; property and sales tax laws; price fixing laws; anti-trust laws; "right-to-work" laws (which forbid business firms and labor groups to enter into free contractual agreements); censorship laws; conservation laws; laws against gambling, prostitution, or the use of drugs or narcotics; "public accommodation," "fair employment," "fair housing," and related laws aimed at integration; and thousands of others. . . one could go on forever.

What is evident in the above list is that all of the laws included deviate from the purpose of government most widely accepted, namely the protection of the rights of individuals against the usurpation or abridgment of these rights by other men; in other words, the list includes laws which are "progressive" and render government an agent toward bringing about certain preferred human aims as against others, even when some members of the citizenry would prefer to neglect these aims. Laws, on the other hand, which protect the right of persons to act in line with their judgement, provided other's right to this is unimpinged, are not in the above list. The distinction, though a controversial one among philosophers interested in the concept of "human rights," is evident between progressive and protective laws. In this discussion, however, I cannot defend the distinction in detail. What I want to say about it is simply that the laws which I call protective are equally related to all citizens since they deal with the rights of all human beings to possess, with something which is common among the members of a society; the laws, however, which are in the list deal with the particular aims, goals, interests, difficulties, preferences and tastes of segments of the citizenry. For this reason I call them "progressive" laws: they contribute to the progress of these aims and goals; they do so, however, at the expense of other people's ability to make progress in the aims they have chosen or might have chosen for themselves.

The laws I have included in my list can be seen to comprise a substantial portion of what is called welfare legislation in our country (or elsewhere). It is the thesis of my paper that elements of the welfare state render the realization and attainment of justice in our society impossible. It is of no importance how the laws come into being—in principle they are no different from laws established by dictators, monarchs, the communist or fascist ruling groups, or a tribal lord, as regards their content; they serve to deprive individuals of their freedom to run their lives in line with their own judgments and capabilities. It is unimportant here whether the people who are thus effected like or dislike their condition—the story of the happy southern slave is widely known and repeated by those who argue for the security and other "advantages" of slavery as against the benefits of justice. It is another issue entirely whether justice is to be preferred to other factors which could be secured in a political society.

Some have said that a just law has to satisfy no other requirement than that it is applicable to all citizens equally. This may indeed be an important rule (measure) for justice in the ***application*** of laws but it is not central to the productivity of justice by laws. A law, universally applied, which would hold guilty of murder not the person who did the killing but one who was in closest spacial proximity to him would be open to "just" application but be productive of injustice, nevertheless.

At this point let me return to the central purpose of my paper and give some illustration of the way in which some of the laws I listed are productive of injustice. Let us take taxation and see in what manner it produces injustice, i.e. in what way taxation renders the assignment of responsibility for various events, situations, circumstances, be they harmful or helpful to taxpayers, impossible. In what way, that is, do tax laws break the link between cause and effect in human action as this relates to the operation of the ***assignment*** of responsibilities?

When a person is taxed, he must, under threat of legal punishment (fines, jail, etc.), give up a certain amount of his earned income for purposes planned by present or past lawmakers. Here it is not important and relevant that ***some*** of these purposes may be shared by the taxpayer himself; he ***must*** support them—he does not enjoy the option of supporting them or not supporting them. What is central is that the taxpayer is ***not free to withhold his support*** from the purposes in point. In being deprived of his freedom to use his earned income for purposes designated wholly by him, the taxpayer's resources for advancing his own goals and purposes have been limited considerably.

The above is often rejected as a correct characterization of the nature of taxation on the following grounds: the citizen has gained immensely from many of the goals which have been achieved without his consent, in the past; for this reason it is only right and just that he should share the cost of these accomplishments. This is highly spurious. It is clearly unjust that a person, having been "given" something, for which he never had even the opportunity to ask, is made to share the cost of the "gift" at a later date, when he does not enjoy the option of rejecting the gift. The injustice arises out of the imposition of a responsibility upon the person when he does not share in the assumption of that responsibility. The reply that "He can leave the country any time he does not prefer the condi-

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tions" is equally spurious: after all it is merely an admission of injustice to tell a person that if he does not like the injustice he has still the option to escape the premises where it is the existing political or legal condition. Furthermore, if injustice is accepted within the legal system in principle, there is no ground for limiting it to those who wish to remain within the territory covered by that legal system; the next step may include the injustice of disallowing people to depart. (Such a measure is being contemplated in Great Britain as a result of the "brain drain" on the very grounds that the people who are leaving received their "free" education in England; it is, of course, the status quo within the communist block.)

Considering that the issue at hand is the determination of whether justice is possible ***within*** a political system correctly characterizable as a welfare state, we can proceed to investigate the manner in which taxation relates to this question. It should, however, be kept in mind that when one speaks of a society and its political system, it is a mistake to compare the situation to that of a social club or a fraternal organization. These latter are voluntarily formed groups which coexist ***within*** a society and do, in fact qualify very frequently as a "legal person" in their treatment by the law. The groups do ***not*** resemble society in many ways; most importantly, however, one is free to join or not to join them, free to take one's leave from them once his self-assumed debts to the organization have been paid, and the organization has no police force of itself but operates within the legal system of the society of which it is a part. Society, in general, does not have this character: its members are born such, in the main; one does not have the choice to assume one's "obligations" to the general society; society's government body is not legally responsible to yet some greater or higher organization with ***its*** own legal system). The fact that there are in existence different nationstates and that there is some toying with the idea of a super-world-legal-system (world law, United Nations, etc.) does not invalidate my point; the governmental system preferred by someone is usually the same that he would like for the whole world to adopt. This is true of those who find the welfare state as the best kind of organization for human beings. This clearly is not the case with social and fraternal organizations such as the Lions or Kiwanis Clubs, the Red Cross, Optimists, and the thousands of other groups, each of which has its own special (group of) goals, aims, purposes, methods, interests, emphases, and so forth, representing the goals, etc., of its members, all of whom joined the groups presumably knowing of these and free to stay out. The contract theory of society promulgated by political philosophers such as Jean-Jacques Rousseau, is a totally invalid conception of the state, both historically and theoretically.

Now, to return to the investigation, let me note that the taxpayer's own choices are not the determinants of what he will do. He will be forced to support programs—with his presumably honestly earned taxed income—he ***might*** never support were he free to refrain, and again, he ***might*** never undertake goals that he ***would*** have chosen to pursue had he been free to do so. What he will do, in areas where he is free to act, will be the complicated outcome of choices with possibly crucial alternatives removed. With these alternatives lacking, it is now—when we attempt to attain justice in appraising him, both legally and otherwise—simply impossible to determine whether this lack did in fact contribute to the various events, circumstances, and states of affairs of his life.

Let us just imagine that the individual in question would have been free to invest his earnings in some business venture; he might have spent it on further education for himself or his children; he might have gambled it away—the possibilities are innumerable. ***However*** he ***might*** have spent his income had he been free to do so is indeterminable. What is more important is that equally indeterminable is ***who*** precisely is responsible for this condition in which we find the taxpayer.

If the abstract account given above has no impact, perhaps a more concrete one will. We can easily imagine a citizen who needs a new car because the motor of the old one is defective. He cannot, however, both pay his taxes and purchase a new vehicle. One morning he gets into an "accident" and suffers serious injuries, all as a consequence of the failure of his automobile. It is obvious that we cannot determine who is to be held responsible for the "accident" and the resulting injuries, etc. The individual could not buy a better car after he paid his taxes; furthermore, we cannot tell whether he ***would*** have bought one, had he been free to do so. So, the case is closed—with his earnings taken as taxes he certainly could not buy a car, and of his own free choice, with all his earnings, he could have, but might not have, bought one. The responsibility for the ensuing situation: indeterminable; a just appraisal of the situation: impossible.

It may be replied that "After all, the sheer fact that our social, economic and other interactions are complicated—not to mention the issue of psychological and sociological theories which make the matter even more complex—can contribute to numerous situations wherein the assignment of responsibility and, therefore, ***just*** appraisal, are rendered impossible." Granted the objection, there is a fundamental distinction between injustice which is the result of default, complications, and the like, and injustice which is brought about through the consciously planned actions of members of society, human beings, who might have refrained from making the laws which now contribute to the widespread injustice. From complications injustices arise, which, however, are not planned to occur and are not desired, at any rate. From laws, which are not the result of the complexities of life itself but the ideas men have about dealing with some of these complexities, injustice can only be seen as avoidable.

The impact of taxation on a man's life is immense—yet, very few respected and prominent philosophers would argue that taxation is a contributing factor to injustice, taxation as an institution; they may argue that certain features of it produce injustice, of course. And this is not surprising. The interventions into the life of individuals in our society are so widespread and common, so well embedded, that they are virtually impossible to sort out. We may benefit from modeling the situation on what happens to the balls in a pinball machine: by the time they reach the end of their run they will have gone through various interferences, obstacles, shoves and pushes, all of which contribute to the end result. With a person the situation is a thousand times more complex due, in part, to the fact of human agency itself. The interferences are both caused and suffered by people, yet the intermediary, the laws, serves to break the link between the interferer and the interfered unlike the pinball case and unlike, even, the case where a person suffers the interference not from the law but from a private individual or group, as in the case of theft, murder, extortion, and fraud. In these latter, interference has occurred but the law instead of perpetrating it, works to prevent injustice by linking the parties with their responsibility as best as that can be done by human beings.

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I have, thus far, been talking about just one of the hundreds of thousands of laws which can be characterized as depriving people of their freedom to pursue their own chosen ends, that is, laws which are productive of injustice. I will mention only one other law of this kind. This is conscription. The draft deprives a man of at least two years of his life if he is subject to it. Yet, there is absolutely no cogent justification for this law within a society the legal system of which has long rejected slavery as one of its features.

Conscription is defended most frequently on two grounds: (1) A person owes his country certain services in return for the benefits he has accrued by being born in the given country; (2) a country has a right to defend itself against possible agression and such defense is unattainable without conscription. Both of these arguments uphold the welfare of the society (the state) as prior to the welfare of the individual citizens involved in providing that welfare. This is why I consider them classic arguments in behalf of the welfare state.

I have already dealt with argument (1) in connection with the alleged duty of a citizen to pay for services from which he gained benefits but which he never asked for. We saw that we were dealing with a variant of the social contract theory of society the model for which was provided by fraternal clubs and other private organizations which are indeed formed by contract.

Argument (2) is somewhat complicated because it presumes a theory of of nationhood still in question. Does any ***kind*** of country have the right to defend itself? What kind of right would it be that would grant legitimacy to a dictator's attempts, for instance, to defend the country which he rules? Presumably it would not be a moral right but a right of fiat, i.e., a right claimed by reason of rulership. If we are to talk of the right of a country or society to defend itself against agressors, we must be open to the possibility that some countries cannot claim that right. This leads to problems of legitimate authority.

When does a government have legitimate authority to govern? Presumably when it is representative, when the governed have freely chosen to delegate to the government certain responsibilities to be carried out by that government. The crucial feature then is the freedom of the governed, the citizens. If conscription involves the usurpation of the rights of individuals to act in accordance with their own wishes, judgments, goals, etc.—the usurpation of freedom—then a government could not possibly conscript its citizens without losing its legitimacy in the process.

If, then, a country has the right to defend itself, it cannot do so by conscription without losing that right (by losing its legitimacy and, thereby, its right of exercising authority).

It is clear that conscription limits freecome of action; thus, the consequences of military conscription—or any other kind—are such that it is impossible to speak of the draftee as one who is responsible for his action—his life is largely not in his own hands, the actions which he undertakes are not strictly his own, and the responsibility which ordinarily goes with the performance of actions by persons cannot, therefore, be his own either. Of course, some decisions and acts, once the limits of decision-making have been set by law, are the draftee's own. It would, therefore, be false to hold that he was responsible for ***nothing***. Even this fact becomes obscured by the constant factor of interference, however.

It is obvious from the above that conscription is productive of grave injustices in society and renders the determination of responsibility—the linking of cause and effect in human action – impossible. In various more or less complicated ways, laws such as price-fixing, minimum-wage regulations, racial quotas, censorship, anti-gambling ordinances, and others are productive of similar injustices. Minimum-wage laws, for instance, ***force*** an employer to pay more for work than the market can bear; this can result in cutting down the workload; as a result people will be dismissed; others gain higher wages not as a result of better work but because of direction from the government; the higher wages can lead to higher prices, thereby eliminating the general effect of higher wages altogether. When companies collapse, employees are dismissed, children go hungry, illnesses cannot be cured for lack of funds, etc., etc.—thousands of consequences follow as a result of the initial government action which deprived men of their right to act in line with their own judgment; once again the link between the cause of the results and the results are broken and responsibility cannot be assigned.

Governmental subsidies to businesses are productive of similar results. And so are tariffs and quota systems, both of which deprive buyers in this country of alternative courses of action by force. When a manufacturer simply withholds his products from the market the situation is different, since it is he who makes the product and he, therefore, is not depriving anyone of something to which there exists a right. If Frank Sinatra refuses to sing to me when I offer to pay him for it, he is not depriving me of something to which I have a right. If another person stops him from singing by cutting his throat, both Sinatra and I have been interfered with. The government's tariff and quota policies can be modeled on the above example without any change in the essentials.

I believe that I have listed enough examples. Clearly, every law mentioned earlier and thousands of others can be put to similar scrutiny. What would be discovered is that at some point laws of this type interfere with the freedom of individuals in such a way that their activities will be impervious to being appraised concerning matters of responsiblity, blame, desert, or accomplishment. And such a state of affairs renders justice within society an impossibility.

I have not ventured in this paper to suggest a governmental system in which the attainment of justice would be possible. That would certainly require not only another paper but several books. The fact that the society which I think would come closest to one within which justice is possible has been approximated within this country, with drastic contradicitons evident within that approximation, would render the task of arguing for that sort of a system even more difficult than would ordinarily be the case. I am speaking, of course, about the system of government known as constitutional democracy, with government being limited to the duties of administering laws, protecting the innocent, and prosecuting the guilty. Within the society itself the police and the courts would represent the government, and for purposes of contact with other nations the military—pertaining to aggressors—and the diplomatic corps—relating to international legal matters —would represent the body and functions of such a government. The economy, morality, culture, sports, entertainment, education, etc., of the people would be their own individual business (or collective, whenever the collective body can be organized voluntarily). The financing of the government would be through the charging of fees for

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contracts which might be in need of legal backing and protection. Unlike a utopia, that kind of a system would secure justice for people, while it would be the people who would have to secure all else for themselves.

To argue for such system would take us into ethics, metaphysics and, finally, epistemology. So I must refrain from doing this now. My present aim has been to discern whether justice is possible within the framework of a governmental system commonly known as the welfare state. The conclusion of my inquiry was that it is impossible to have both justice within a society and the governmental system of the welfare state.

As I mentioned, this conclusion does not establish the undesirability or impropriety of the welfare state. There might be other considerations which must be brought to bear upon those questions, considerations which might lead us to abandon justice as a desirable state of affairs within a legal system in favor of some other commodity, say security or happiness or racial purity.

Needless to say, I cannot think of any commodity which is more important than justice. Thus I will confess my preference for a social system within which it is attainable. But a preference is not enough in philosophy; arguments are needed. To argue in favor of justice, as against other possible and competing benefits a governmental or legal system may provide, is necessary. Hopefully, despite the anti-political philosophy trend of contemporary philosophy, discussions related to such matters will attend to that question also.□

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Mao, Reagan, Davis, and the Gun, the Gun, the Gun

cheri kent litzenberger

Since Reason began publishing two summers ago, the editor has received sample broadsides from campus and political groups around the country. Some are good; some bad. This month we display one of the best. Mrs. Litzenberger is no stranger to these pages — this is her third contribution in a year. Concerning the sell-the-schools movement that seems to be gaining some ground in California, Cheri reports two interesting *occurances: The offer of an insurance* combine to buy the whole system outright, and the statement of a prominent San Diego New Leftist professor (and admirer of Ayn Rand's novels!) that the government should sell the system in order to "get politics out of education." - Ed.

I was shocked, at first, to hear SDS'ers, Black Panthers and our other self-proclaimed revolutionaries quote Chairman Mao's wisdom on politics: 'Political power grows out of the barrel of a gun.' I was shocked because, for once, Mao had said something about politics which was absolutely correct.

Political power, as the dictator should know, *is power over people.* It is the power to restrain people from acting as they may wish to act, and/or to force people into actions they may not wish to take. It is the power to keep me *from smoking pot, or to make you pay* taxes for the Vietnam War or the Poverty War, or to stop both of us if we decide to rob the local bank, or to conscript us for 'national service. In the final analysis, political power is the power of the jail cell or the gun.

Government, which holds political power, differs from any other institution because it has a legal monopoly on that jail cell and that gun, a legal monopoly on the use of force. (For example: if someone stole my stereo and hid it in his house, I could not rush into his living room, point a gun at his head and demand my stereo back. Nor can I drag him down to the police station and force him to appear in court — only a policeman and a judge can do that. And that's a good thing — because not being Sherlock Holmes, I could be wrong about the poor guy.) The only justification for *granting an institution such a monopoly* is that it could then prevent anyone from from arbitrarily initiating force against someone else. It could protect those who gave it the gun, and could serve as an arbiter in any dispute which arose between them. So long as government acted only as a protector and arbiter, it could perform a valuable service; it would be restricted to using its gun only against those who had already initiated force against one of its citizens, restricted, that is, to defense and retaliation. If you're going to set up a political gun, however, you'd better make damn sure that that's the only way it can be used.

Which brings us, by the way, to Ronald Reagan. Ronald Reagan's government, like all other governments in the United States (and the world), functions as considerably more than a protector and an arbiter. For example, it runs the University of California. Which should be *none of its business — a university is for* learning, not target practice. For in order to run the University of California, Ronald Reagan (and others before him) have employed the political gun not in protection, but in aggression against the citizens of California. They have been forced, by the California government's political power, to give up some of their earnings to support UC. (Anyone who did not give up that $$ would have it forcibly extracted from his bank account or would be detained behind bars.)

Notice: when one man takes something from another man at gunpoint, it's called theft or extortion. When a bunch of men get together and call themselves a government and do the same thing, it's called performing a public service. When one man works for another but has nothing to say about the product of his effort, and is not paid for his work, he's called a slave or an extortion victim. When the same man works and has part of the product of his effort taken away from him by a government, under threat of being jailed, he's called a useful citizen.

Anyway, so here's Ronald Reagan with all of his 'legally' extorted money for the University of California. Ronald Reagan says he believes (and I agree) that if you earn a dollar you should be able to say how it's spent. So he thinks the University of California, paid for by 'the public,' should be run in the manner 'the public' desires (except that they can't desire not to run it at all). But who, pray tell, is 'the public'? After long and arduous search, no being called 'the public' could be found. It seems that 'the public' is a fictitious personage, a general name for all sorts of different individuals. And, predictably, they have all sorts of varied opinions on what should be done with the University of California.

So here's poor Ronnie with all that loot, and all sorts of people — taxpayers, UC administrators, professors, and students, politicos of all colors, pressure *groups of all shapes — fighting over who* should spend it on what.

Which brings us to Angela Davis. it seems that Ronnie found a Communist (sigh — another one under the bed) teaching at UC. *It also seems that* Ronnie and the majority of people who

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are paying for UC, and for Miss Davis' salary and use of facilities, do not desire to pay her salary or permit her to use those facilities (they did, after all, elect Ronald Reagan). But Miss Davis, along with the remaining minority, want her to teach at UC; and they don't think Ronald Reagan should have anything to say about it. However, Ronald Reagan, a democrat at heart, believes in majority rule — and the majority, at present, has given him the political gun. He and his predecessors used that gun on the taxpayers to finance UC; members of the University thought that was just fine. Now he wants to use it on the UC faculty to keep them 'politically pure' — and my, how they squawk. Someone should have told them that guns can be pointed in a variety of directions.

Which brings us back to Mao Tse-tung.

Let's pretend, for a moment, that all schools were 'publically owned,' as they are in the communist countries Miss Davis finds so attractive. There, only people with Miss Davis' views can teach. Anyone else is prevented from teaching (or speaking, or writing) by Mao's political gun. If ***all*** schools were 'publically owned' in Ronald Reagan's California, then Miss Davis and those like her would be prevented from teaching by Ronald Reagan's political gun.

Now let's suppose that no schools were publically owned. In other words, let's take the political gun entirely out of Ronald Reagan's hand, for a moment, and suppose that he was thereby forbidden to use it against the taxpayers to support UC, and consequently forbidden to interfere in any way with UC business. In that case, all schools would be private institutions. Miss Davis would probably not be hired at many of them, because her views are unpopular — many people object to supporting someone they believe is working to destroy them. But those who do not consider Miss Davis a threat, consider her a good teacher, and want to learn from her, would have the money they are now forced to spend on UC to pay Miss Davis. She could, in essence, start her own school, and no one, including Ronald Reagan, could do anything about that. (Of course Miss Davis could start her own school today, too, but since she and her supporters already pay taxes for UC, she should be able to use its facilities and they probably have damn little money left, like the rest of us, to start their own school.)

Now suppose, today, Miss Davis were teaching at a private school — only Ronald Reagan became the school's president. And suppose he was going to fire her for her political beliefs and affiliations. And suppose further that the students at that school wanted Miss Davis for a teacher, or objected to RR's policies. Those students could quickly put RR out of business — by withdrawing their tuition money and refusing to attend and therefore support such a funky school; by launching an anti-Reagan campaign with the school's financiers as well as with potential students. It would be possible, in short, to organize an effective boycott. The threat of such action might scare Ronald Reagan into submission (all of this assuming that RR is not open to rational persuasion on the Commie issue, but is open to rational persuasion on the matter of his economic solvency); but if it didn't, he would either have to go out of business or face a huge loss. Or even face the threat of competition from the new school the students built with their withdrawn tuition money.

Even if a minority of students disagreed with School President Reagan, and couldn't convince enough others to make him capitulate, at least then their money wouldn't go to support his highly questionable academic policies.

Today, UC students can do absolutely nothing. Even if they did boycott today, it wouldn't make any difference; because all RR has to do to keep his university running is to turn the political gun back on the taxpayers for more money.

So now what?

The people who quote Mao Tse-tung have one solution: take the gun away from Ronald Reagan and give it to someone like Mao Tse-tung, who agrees with them. Take over the university. "Political power grows out of the barrel of a gun" — so grab it. This is, of course, what Mao had in mind all along.

Some people who don't think a whole lot of Mao Tse-tung but don't think much of Ronald Reagan either have another solution: take the gun away from Ronald Reagan and give it (peacefully and democratically of course) to them — give it to teachers and students at UC to use for "the good of everybody" — with them deciding what is good for everybody.

These aren't very radical — or satisfactory — solutions. Instead of just taking the gun from one person and giving it to someone else, why not take the gun out of the UC picture altogether. Don't let Ronald Reagan have it — don't let SDS have it — don't let Donald Kalish have it — don't let faculty "liberals" have it — don't let students have it. Throw it away. ***Liberate*** the university. If you want to keep politics out of education, you're going to have to make education politically free — to make it a private enterprise.

But what if then, you say, Miss Davis didn't have enought money to start her own school? Well, if she didn't, it would be because no one wanted to pay her to teach them. And surely you wouldn't advocate Miss Davis' ***forcing*** people to pay her to teach them or to listen to her, as is the case in the communist countries she admires. Besides, there are lots of things I want that I don't have the money for, and lots of things you want that you can't afford either. So what. So earn it. Just because you, or I, or Miss Daivs wants it doesn't make it right for us to force someone else (with a regular gun or a political gun) to provide it.

Which brings us back to Ronald Reagan, who is seeing that we are provided with UC. Today, UC is public, and it's not likely to change right away (though someone has offered to buy it — can you imagine that? the whole bloody system). As long as it's a public institution, Miss Davis— and any other member of "the public" — should not be prevented from teaching in it, regardless of his or her political views. That is horribly unjust to all those who do not want to support Miss Davis and are forced to do so; and it is horribly unjust to all like Miss Davis who don't want to support people like me, a laissez-faire capitalist. That, unfortunately, is the way it goes when the system is ***inherently*** unjust — when its whole existence depends upon depriving innocent people, by force, of what they have earned.

Which brings us back to Mao Tse-tung.

We could throw away the gun, you know, someday.

Wouldn't it be nice to be learning in a school instead of a firing range?□

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editor's notes

●A number of readers, impressed with Reason's new format, have asked how well the magazine is selling, hoping that it was selling well enough to justify a continuation of the format. Well, the magazine is selling several times better that last year at this time, despite the higher price. Still, in order to print the next issue(s), I need about twice as many subscribers or a goodly number of renewals. People who like what I'm attempting to develop Reason into can do two of several things: they can renew (or purchase gift subscriptions) or, at the expense of a mere few moments, can fill out the names and addresses of friends or aquaintances likely to subscribe if sent a sample. A self-mailing form has been provided elsewhere in this issue for these two purposes. I should emphasize that, regardless of the receipts that this or future issues draw, I intend to continue publishing Reason (even if in mimeo form) because the benefits I accrue have little to do with the financial success of Reason per se. With the knowledge that my career is that of a writer/intellectual, the reader should be able to see the many ways that the production of this magazine would act as an investment. Incidentally, anyone in Boston interested in learning what's involved in publishing a magazine in exchange for the performance of such exciting production tasks as pasteup and proof-reading should call me.

Presuming that I can continue printing future issues of Reason will continue to evolve toward the ideal form I have in mind. The back-of-the-book, especially the letters forum, will be expanded. Articles will be longer and more complex, no longer brushing aside interesting issues in favor of recapitulation of well-known (to students of Objectivism) principles. We will be printing as many articles as we can obtain that deal exclusively with philosophy, at the optimal rate of one per issue. We are negotiating with Tibor Machan, for example, for the production of several medium length articles on epistemology (as well as several shorter current events pieces.) Robert Poole is working on an article on the oceans and ownership. His wife is doing preliminary research (with the aid of the presidents of several pharmaceutical firms who responded to last month's classified ad) for a series on drugs and regulation. Cheri Kent Litzenberger will be producing, sometime in the future, additional articles most of them related to education. Her work currently consists of attending various classes in the San Diego area for the purpose of finding out exactly what kids are being taught - and learning - in college today. Her next article will probably consist of an analysis of the results of this survey. Next month, if negotiations succeed, we will run two articles on racism, one an excerpt from Lillian Boehme's forthcoming (March) book, on moral aspects of racism, and the other, an article by Stanley Lieberman refuting the anthropological base of racism. Meanwhile, my next two contributions will probably include a review of The Careless Atom, and a continuation of my series on press objectivity. Mr. Poole has been invited to a January SAE conference on the topic of auto safety, and if that proves to be interesting (and it should), he will probably report on it. How Mr. Poole got invited is interesting, that's certain.

Well, I hope I've provided enough information to induce you to spend a little time helping to make it happen.

●Introducing a new feature: a letters forum. In the coming months, we will be printing readers' letters on a variety of subjects. To start, we've chosen a letter on a subject that is increasingly becoming the topic of debates among students of Objectivism (especially on the West Coast): the social system known (perhaps erroneously) as "anarcho-capitalism". Do not infer from this particular choice that I am or have become an "anarcho-capitalist" (whatever that may be). Instead, my choice was predicated on two facts: that the debates are now quite widespread and the effects just as noticeable (I've heard that even that stronghold of republicanism, NYC Metro Young Republicans Club, is now discussing the topic) and that the debate is the first of its kind among students of Objectivism (SO's) - one over fundamentals conducted on a non-local (national) basis. In short, the debate is news. For openers, I've obtained a copy of a letter written by Jarret Wollstein to a reader of his magazine, the Rational Individualist. This is meant to act only as a focal point for others' comment upon and is not intended to limit the discussion to one particular aspect of the problem. If you have an entirely different approach to the problem, feel free to approach. It should not be inferred that, in printing a letter, I necessarily agree with its contents. I will print all letters of interest that indicate some originality of thought. Letters to the editor that are not meant for publication or are not to be cut should be so indicated. Out of kindness to the English language, certain sentences in Mr. Wollstein's letter have been modified. Those who want to obtain the original, unexpurgated version should contact the author directly.

●I am glad to hear from you and glad to learn that you are willing to rationally discuss the question of competing defense agencies vs. monopoly government. I am afraid that you missed the implication of the arguments I stated in my previous letter, and misread my meaning in several cases. I will go into somewhat more detail here, and I believe that I will provide in this letter arguments which you will be unable to logically misunderstand or refute.

At the offset let me emphasize that the central issue in the question of the morality of competing agencies of defense is not how would they work out, but whether or not the concept is moral. As Ayn Rand correctly states, the moral determines the practical; not visa versa. (By the way I have explicitly considered her arguments asserted in "The Nature of Government" in some detail in my "Society Without Coercion" and shown them to be fallacious. You should have, by now received your copy of this essay. If not, let me know and I will send you another one.)

There is one central issue in the question of morality of limited government as our discussion has so far evolved: Does government initiate force by outlawing and forcably interferring with competition with its activities, or not? If it does do so, then "limited government" is inherently immoral; if it does not, then lim-

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ited government is morally permissable. I contend that this issue is not even debatable if one considers precisely what is meant by the concept of "initiating force" To initiate force is to use it for the first time against persons who themselves have not initiated or threatened to initiate force. One can initiate force only by violating some one's or some group's rights.

If a private defense agency confines its activities to retaliating force against criminals, it certainly can not then be accused of initiating force against them. (If it does not confine its activities to retaliating force against criminals, then to that extent it is a criminal gang, as a government is when it initiates force.) Involved in the retaliation of force against criminals (by which I mean those who violate objective moral laws -- not those who violate any collectivist laws a coercive state happens to decree), are such acts as arrest, detention, trial and retribution (not punishment -- see "Society Without Coercion"). Now at this point I suppose that you will object that only government has the right to arrest, detain, try and force criminals to provide retribution; that it would be "illegal" for anyone else to attempt to do this. But consider further the nature of these "rights of government."

Government can have no rights not possessed by its citizens and voluntarily delegated by them to it. Do I as an individual have the right to arrest, judge and incarcerate? If you agree that I as an individual do have this right, then we no longer have any argument (as you will see), we both agree that I may do anything that a government police force, court, etc., can do, and if I have a right to engage in these actions, then government can not morally interfer with me when I am in fact retaliating. But if you say that I do not have such rights, if you assert that only government may morally engage in such actions as arrest, trial and incarceration, then I ask you WHERE DOES GOVERNMENT GET THE RIGHT TO ENGAGE IN SUCH ACTIONS? Remember that a collective can have no rights which an individual does not have. If I do not have the right to arrest, judge and incarcerate, then government can not have such a right either. If I do not have a right to arrest, judge and incarcerate, then I can not possibly delegate such a right to goernment -- I can not delegate that which I do not possess. Unless individuals possessed the rights of arrest, judgment and incarceration to begin with, then no collection of individuals (whether you call that collection society, the state, government or whatever) could possibly even acquire such rights.

Or do you only say that while I have such rights, that I must delegate them to a monopoly agency of enforcement, i.e., government? But, if I possess something by right, then I have no obligation to delegate it to anyone. That which I possess by right (including such "possessions" as my right to liberty and action) I may morally do with as I please; I may exercise my rights in person if I so choose. (Whether or not it is to my rational self-interest to do so is a different question; objectively a man has a right to be wrong; e.g., to commit suicide even if it is not to his rational self-interest to do so.) To attempt to say that I must delegate my rightful possession is to say that I do not have a right to use and dispose of this possession (in this context, that is to say to exercise my right to retaliate) which means that I do not in fact have such an authority to act -- which means that I do not have such a right. But if this were true, as I state above, government could then have no such right either.

Therefore we are forced to the conclusion that either I have a right to judge, incarcerate and arrest, which I may freely exercise myself if I so choose, or there is no such thing as a right to retaliate at all; that no one may judge, arrest and incarcerate. Since I contend that I do have a right to judge, arrest and incarcerate, that these actions are moral when they constitute the retaliatory use of force, I conclude that it necessarily follows that for a collective calling itself government to interfer with either my personal exercise of this right or my delegation of it to an agency other than government, e.g., a private police force, is to violate my inalienable right to retaliation.

Now this also answers your critique of my "short proof" of the immorality of retaliatory force. Your "counter example" to my third premise ("Retaliation of corce is moral." consisted of the assertion that I have a "moral duty" to call the authorities after successfully warding off an attack; or restated that if I do not call the authorities, but attempt to instead prosecute a criminal myself I would be violating someone's rights. But as I have proven above, I have no moral obligation to delegate my right to retaliate (as defined above) to anyone else. I have necessarily the same right to deal with the criminal as could any "government".

Now the point of all of this is not that I think it is rational for men to go about carrying guns and spontaneously judging their assailants, but rather to demonstrate that contrary to your (unproven) assertion, for an individual or a private organization to do so is not to initiate force against government. On the contrary, for government to attempt to interfer with my retaliation of force is to vilate my inalienable rights.

In a free society very few men would choose to engage in retaliation themselves personally. It would be far safer, far more economical, far more rational, for them to delegate this function to an outside agency. But they violate no one's rights by simply not delegating the protection of their rights -- they commit no immorality against other men, much less against a mythical association called "the state". Further when most men do delegage the protection of their rights, there is no moral requirement that the delegation be made to a "government." Men are morally free to establish and contract with the defense agency of their choice.

Let me make absolutely clear what I have so far conclusively proven. I have so far demonstrated that if one believes in the concept of man's right to retaliate (and arrest, incarcerate and judge) at all, then one must accept the fact that private agencies could morally be established for this purpose, and that government cannot morally interfer with their operation so long as they only retaliate force. Naturally, if they initiate force, government or anyone else could "interfer with them", but recognize that the same moral stricture applies to government also: If "government" violates man's rights then anyone

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can morally retaliate against it. Note that the same moral principles apply to governmental action as apply to the action of private defense agencies. Regardless of the fact that you think that if there were competing agencies of defense there could be no "objectively defined and enforceable laws" (which is completely false); regardless of the fact that you believe the irrationality of men requires government, the fact remains that IF GOVERNMENT CAN MORALLY RETALIATE AND JUDGE, SO CAN THE INDIVIDUAL AND PRIVATE AGENCIES.

You have further asserted that even if there were competing agencies operating on the basis of objective law, "there would have to be a super-agency or government to oversee their activities." I assume that by this you mean that "government" would be the law-giver and final judge. But where, I ask you, does "government" get the special right to decide what laws are and to judge last. Let us see where your argument leads us. Necessarily there could be only one super-agency or the concept would be meaningless. If your super-agency is to be different from the non-super agencies it must have some greater powers that they do or it would not be super. Being superior to the other agencies, your "super-agency" must have jurisdiction over them (otherwise it would not be superior to them). Now I ask you, how does your government/super-agency get jurisdiction over my private defense agencies. Where does it get the right to reverse their decisions or tell them what to do? Despite your assertions to the contrary, it is obvious that you are in fact claiming "special rights" for your government/super-agency not possessed by any other individual or group. But there is no such thing as special rights. There is no such thing as a super-agency which has an inherent right to dictate to other agencies what they may and may not do. The rights of all men and groups are the same and inalienable.

It is true that competing agencies would need to establish accords for dealing with each other. However this is quite a different matter from your "super-agency." Since I and my private agency have the same right to judge and act as your government, I categorically reject your "super-agency".

You have also said that "The individual implicitly delegates his right of physical self-defense to the government when he renounces the use of physical force," and "The individual who doesn't renounce the use of physical force doesn't have any rights to delegate -- for by violating the rights of others, he invalidates his own claim to those same rights." Now I am sure that you didn't mean to say that. By using retaliatory physical force a man is not violating the rights of others. In addition, it is self-contradictory to assert that a man has a right, but must delegate it, as I have shown. My living in a given society, as I state in my last letter, does not imply anything other than the fact that I choose to live in it. I explicitly and emphatically deny that I have "implicitly delegated" my right to retaliation to anyone' I reserve this right for myself. If government attempts to coerce me to patronize their services or prevent me from protecting my own rights, they are simply initiating force against me and betray themselves for the criminal gang which they are.

I also assert, that in the general case, your concept of "implicit delegation of rights" is a moral obscenity. As R. A. Childs points out in a recent letter of his to Branden, any delegation of authority between adults requires an explicit agreement for specific purposes, for a specific time, involving specific agents. In other words there must be a formal contract -- not an assumption by an outside party such as yourself of what I have or have not delegated. All of the conditions which Mr. Childs correctly lists are absent in your concept of an "implied delegation of rights". (Please don't say that if I vote for a Congressman for two years charged only with the passage of laws on the use of retaliatory force that I am delegating to him the enforcement of my rights. As Lysander Spooner points out, I may simply vote to choose the lesser of evils. Besides, what if I don't choose to vote or my candidate does not win? In what sense then have I delegated the protection of my rights to a man who I opposed and may hate?)

I agree with you that: "A private association (of defense) would at best, be charged only with bringing the retaliatory use of physical force against their clients under control." But the same is true of government. If I do not subscribe to your government's defense force I would not then be their client. (And remember that even in an Objectivist limited-statist society there would be no coercive taxation.) Government has no "right" to force me to accept their protection. For the same reasons that it would be immoral for a private defense agency to attempt to force me to accept their "protection" if I did not want it, it would also be immoral for government to attempt to force me to accept their protection if I did not want it.

In my previous letter I asked you another serious question which I'm afraid you misunderstood. My question was "... what is the moral basis for government's legal monopoly on the use of physical force." You answered that government is "charged with this responsibility." But this is no answer at all. Charged by whom? Show me the contract. You continually use terms such as "the legally constituted authority of the state," as if "the law" (meaning the will of some government) had the right to grant authority to itself. By the very concept of "legally constituted authority" you can only mean that the state has some special authority which other organizations do not. Again I ask, WHERE DO THEY GET IT FROM? That is, prove to me that such a special authority exists.

Up to this point in our discussion I have been rather easy on you, operating defensively by directing my remarks only to issues which you have raised. Now, however, I will go clearly on the offensive and ask you to justify the many implicit assumptions behind your concept of "limited government" (adopted apparently. without modification from Miss Rand's sketchy remarks). First, please outline for me how your "limited government" would operate. Are you going to have elections? For what positions, and what will your legislature do?

What dominion will your "limited government" have over me? Will it be able to commit me to its wars or force me to pledge allegiance to it? Will I be thrown off of my property if I do not vote or salute your flag or patronize your courts in civit cases? Will your government's "agents"

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continued from page 7

Today, if a man discovers the existence of a hither-to unnoticed rights-violation, he would do best not to mention it, for in all likelihood the government's response will be not to ajudicate the crime but to set up yet another regulatory agency and thus place a new damper on man's creative faculties. And if he comes up with an elegant legal techique to solve a recognized crime, he will probably be laughed out of court. (As example, consider the treatment afforded those who attempt to sue an environmental polluter, or those who press charges against universities for their part in promoting campus riots.) Faced with an almost (there are always magazines like this one) nil market conditions, it is not surprising that legal theorists spend their time devising means to extend the power of the state, rather than the liberty of the people. It's just supply and demand.

It shouldn't be hard to see how, once freed from the degenerating effects of a socialized legal structure, the philosophy of law would become a highly profitable (particularly during the initial period of decontrolling the economy, when a great number of problems would have to be solved in quick succession) area of endeavor, and a major weapon against brutality. After all, until one discovers the principles by which to distinguish brutality from non-brutality, one has no means by which to combat brutality.

This marks the end of this month's notes. I don't expect the reader to accept the material here as proof conclusive—it isn't meant to be. But at the very least the reader should now be aware how far from precise or rational are the statements and critiques concerning the police being offered by the mass media-recognized polemicists of the "left" and "right." Since the only group even pretending to offer a consistent and radical solution to the problem of police brutality is the New Left, perhaps it is appropriate to end these notes with a comment on their "consistent and radical" solution, the complete socialization of the economy. Let us put it in the form of a question: Isn't it ironic—and telling—that the police force with which the socialist New Left finds so much to fault, is, in sum, a socialist institution?□

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trespass on my property in order to "protect my rights" even if I tell them that my property is private and inviolate, that they have no right to come onto it for any purpose so long as I violate no one's rights? What if I and all of the persons in my county get together and decide that we do not trust your government, that we would prefer to provide for our own defense? Will you then still come onto our lands *without our permission* and jail us for protecting ourselves? If so, BY WHAT RIGHT? What I am asking you now, if you do not know it, is do men have the right to secceed? If they do, then your "limited government" is lost. But if not, why not? However, I will not stop there.

Please tell me further how nations are properly formed? Is it by decree, by one group asserting itself to be the rulers? And how should national boundaries be created? How do you decide who is "the government?" What happens if when you are attempting to form your government you fail to get unanimous support for it? What if 70% or 50% or 1% or one person in the geographical area of your proposed "nation" decide that they would rather not be a party to your government, that they consider their lands under no dominion and no authority save their own; that they do not recognize the authority of your monopoly agency? Or what if they prefer to set up their own "government" and have elections every 2 years rather than every 4 years? By what authority will you stop them? And even if you do manage to somehow establish your "limited government" with unanimous consent what authority does it have on succeeding generations of men; how does it get authority over me and my property if I am born into it? In what manner does the will of my ancestors become morally binding on me.

And how does all of this apply to the United States which was formed at a time when most men could not read or write; when a goodly number of men within the borders of the 13 states pledged allegiance to Britain and the majority of men did not take sides one way or another? And what of the government today, which is little more than a criminal gang, taxing (meaning: stealing) over 40% of my income, preventing me from engaging in a great variety of businesses, killing and enslaving by the thousands my peers through the totalitarian draft? What of its policemen who jail men for charging their own price for their products, evict men from their property in the name of "eminent domain", and enforce a myraid of immoral, irrational and unnecessary laws of the coercive state? Am I to respect and sanction this government also?

I declare that I will not sanction tyranny, slavery and coercion in any form and in any degree. I will not contenance the control of the lives and property of free men by your government. The present U. S. government is a criminal gang, your government would be a criminal gang, and as a man of morality and reason I will have no part of any of them. If you say I am wrong, PROVE IT.

Jarret B. Wollstein, President
Society for Individual Liberty

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